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IN THE

Supreme Court of the United States

October Term, 1966

No. 818

EVERT L. HAGAN,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent.

HAROLD V. BOISVERT, R. BROWN, JOE SWEAT, and COUNTY OF LOS ANGELES,
Real Parties in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

EVERT L. HAGAN,
115 North Eastern Avenue,
Los Angeles, California 90022
Telephone: ANgelus 2-5109
Petitioner,
IN PRO SE.

WESTERN PRINTING COMPANY, WHITTIER—OXBOW 6-1722

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Respondent.

HAROLD V. BOISVERT, R. BROWN, JOE SWEAT, and COUNTY OF LOS ANGELES,

Real Parties in Interest.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Evert L. Hagan, hereby requests leave to file the attached petition for a writ of certiorari.

Said petition is based upon the facts, reasons and grounds stated in the petition and petitioner relies thereon.

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EVERT L. HAGAN

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Respondent.

HAROLD V. BOISVERT, R. BROWN, JOE SWEAT, and COUNTY OF LOS ANGELES,
Real Parties in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

Evert L. Hagan, petitioner herein, prays that a writ of certiorari issue from this Court to the Superior Court of the State of California, for the County of Los Angeles, to review the issuance of a peremptory writ of prohibition and mandate preventing the prosecution of an action by petitioner in the Municipal Court of the Los Angeles Judicial District.

OPINIONS BELOW

The Superior Court of the State of California, for the County of Los Angeles issued a peremptory writ of prohibition and mandate on December 3, 1964.

The District Court of Appeal of the State of California, Second Appellate District, Division Two, affirmed the writ of prohibition and mandate on May 24, 1966.

The Supreme Court of the State of California denied petitioner a hearing on the matter on July 20, 1966.

JURISDICTION

The writ of prohibition issued.

Petitioner appealed to the District Court of Appeals, State of California, Second Appellate District from the writ of prohibition and mandate issued by the Superior Court of Los Angeles County, Honorable A. Curtis Smith, on December 3, 1964.

Petitioner filed for and requested a hearing in the Supreme Court of the State of California, which Court denied hearing on July 20, 1966.

Jurisdiction of this Court is invoked under the 4th, 5th, 8th and 14th amendment to the Constitution of the United States and 28 U.S.C. Section 1343 and 42 U.S.C. Section 1983.

QUESTIONS PRESENTED

1. Were petitioner's Civil Rights violated by denial of due process in the issuance of the writ of prohibition and mandate?

2. Are California State Government Codes, Sections 911.2, 915, 945.4 and 950.2 repugnant to the Constitution of the United States in denying equal protection of the laws and as class legislation in excess of that required by the State to protect itself?

3. Was the District Court of Appeal, State of California, Second Appellate District in error in holding that said aforementioned California Government Codes were a bar to the within action?

4. Was petitioner deprived of his United States Constitutional rights under color of State authority?

STATUTES INVOLVED

4th Amendment to the U.S. Constitution.
5th Amendment to the U.S. Constitution.
8th Amendment to the U.S. Constitution.
14th Amendment to the U.S. Constitution.
28 U.S.C. Section 1343.
42 U.S.C. Section 1983.
California Government Code, Section 911.2.
California Government Code, Section 915.
California Government Code, Section 945.4.
California Government Code, Section 950.2
California Court Rule 211 (b).

STATEMENT OF THE CASE

Petitioner's guaranteed U.S. Constitutional rights were violated by the Courts of the State of California in that petitioner's property was seized and his liberty deprived without due process.

HAPPENINGS BELOW

1. Evert L. Hagan, petitioner herein, appeared before the real party in interest, Mr. Harold V. Boisvert, a Superior Court Commissioner in Los Angeles County, in an action number 704,192, records of the Superior Court of the State of California for the County of Los Angeles, on October 1, 1963. Thereafter, Pre-Trial order was issued on October 2, 1963, terminating the Pre-Trial proceedings in that matter.

Subsequent thereto, on November 22, 1963, petitioner moved in the Superior Court in Los Angeles County, for permission to file a cross-complaint, in the aforementioned Superior Court action No. 704,162. This motion was assigned by the Presiding Judge to Mr. Boisvert, who had sat in the aforementioned Pre-Trial hearing, as a Judge Pro Tempore. Petitioner stated at that time that Mr. Boisvert was not acceptable to him. The Presiding Judge stated that petitioner's move for disqualification of Mr. Boisvert should be raised before Mr. Boisvert.

Petitioner, with counsel, went to a courtroom, where Mr. Boisvert was awaiting with a Court Reporter. On

the case being called, and without permitting any defense, Mr. Boisvert held petitioner and his counsel in contempt for the reason that petitioner had in his possession a pocket recorder.

After sentence was pronounced as five days, (without bail), Mr. Boisvert ordered petitioner searched in the courtroom and the recorder deposited with the clerk, and petitioner and his counsel spent that day and night in jail, being released on a writ of habeas corpus the afternoon of the next day.

Before the District Court of Appeal, State of California, Second Appellate District, petitioner prevailed on his petition for a writ of habeus corpus, but his recorder has not been returned to him by Los Angeles County. Petitioner then brought action for the return of the recorder and another action for damages for unlawful imprisonment. (Appendix A)

The Local Rules (Appendix A) of the Superior Court for Los Angeles County, provide that Pre-Trial matters cannot be reported without consent of all of the parties, and this assignment to Mr. Boisvert, was in the Pre-Trial Master Calendar Court. The position of Mr. Boisvert and his County Counsel that it was a Pre-Trial hearing is not shared by your petioner. Your petitioner contends that the Pre-Trial terminated on October 2, 1963, when Mr. Boisvert signed the "Pre-Trial Order." Nevertheless, in furtherance of a conspiracy to deprive petitioner of his Civil Rights, and

to prevent him from having a trial before a full fledged judge, and to obtain his recorder, Mr. Boisvert, did, in fact have a Court Reporter present in his courtroom, to report his soliloquy. Within thirty days from his release from jail, petitioner, through his counsel, wrote to the Presiding Judge of the Superior Court of the said Superior Court, the Honorable McIntyre Faries, asking for the return of the recorder. This letter is attached and marked Appendix "C" and Judge Faries' reply is attached as Appendix "D."

Tiring of this intemperate conduct, petitioner was force to file an action for conversion and damages in the Municipal Court of the Los Angeles Judicial District, No. 714-83. County Counsel for Los Angeles County stalwartly defended Mr. Boisvert, a County or State employee, on the grounds that petitioner's letter to the Presiding Judge did not constitute a proper claim under the California Government Code, Sections 911.2, 915; 945.4 and 950.2. All of this despite the fact that Mr. Boisvert was not sitting as a judge pro tempore, but solely acting as an employee of the Los Angeles County Superior Court. Mr. Boisvert prevailed on a writ of prohibition and mandate, preventing prosecution of petitioner's action, depriving petitioner of his Civil Rights, his day in court, his recorder and his freedom for approximately 24 hours.

Quoting from *In Re Hagan,* 224 Cal. App. 2d, 590, at page 592, the following is a verbatim report of the hearing before Mr. Boisvert:

"THE COURT: First of all, I want to know, does anyone have any equipment to record this particular hearing?

"Mr. EVERT L. HAGAN: Yes, sir, I have. I am recording what you are saying right now.

"THE COURT: I hereby hold you in contempt of court.

"MR. HAGAN: Very well.

"THE COURT: You are sentenced to five days in county jail.

"THE COURT: Mr. Hamilton (Hagan's counsel), are you aware that this man had this equipment?

"MR. HAMILTON: No.

"THE COURT: Mr. Hamilton, on a previous occasion, Mr Hamilton —

"MR. HAMILTON: I know he uses it from time to time.

"THE COURT: You participated in an application for a writ of supersedeas in aid of appellate jurisdiction. At that time, you filed with the Court of Appeal material which was taken by a recording.

"MR. HAMILTON: Yes.

"THE COURT: Did you know that that was taken by —

"MR. HAMILTON: Yes.

"THE COURT: All right. I hereby hold you in contempt of Court and sentence you to five days in jail. The motion will be continued until — I want this man —. I want the bailiff brought in and this equipment taken from him right away and you are to proceed to jail forthwith."

Mr. Boisvert and the others involved violated the 4th Amendment to the Constitution of the United States by their unreasonable search of petitioner and their unreasonable seizure and retention of petitioner's recorder, and violated the 5th Amendment of the U.S. Constitution by forcing petitioner to be a witness against himself, and by depriving him of his liberty and property without due process of law, and violated the 8th Amendment of the U.S. Constitution by inflicting cruel and unusual punishment, and further violated the 14th Amendment of the U.S. Constitution by their oppressive acts, all without due process of law.

REASONS FOR GRANTING THE WRIT

I.

This Court recognizes that the infringement of basic freedoms by governmental actions violates due process of law, if reasonable alternatives which infringe less are available to the government. For instance, in *Robinson v. California*, 370 U.S. 670, 677-678, a 1952 case, it is said:

> "a prosecution for addiction, with its resulting stigma, is irreparable damage to the good name of the accused, and cannot be justified as a means of protecting society, for a civil commitment would do as well."

Also in *Dennis v. United States,* 341 U.S. 494, (1951), advocacy of peaceful change was held to be suitable alternative to advocacy of violent overthrow of government, and therefore government was justified in imposing sanctions on the latter in the interest of sovereign survival. A reasonable approach, therefore, demands analysis of the goal to be achieved and anlaysis of the alternative means of achieving a goal.

The summary procedure to which your petitioner was subjected herein by Commissioner Boisvert, without hearing, violates the fundamental norm of due process in that petitioner's actions were predetermined and unusual punishment inflicted without giving petitioner an opportunity to prepare and present a defense before an impartial tribunal.

Justice Frankfurter has said:

> "among the restrictions to be implied, as a matter of course, are two basic principles of law, that no judge should sit in a case in which he is personally involved, and that no criminal punishment should be meted out except on notice and due hearing." *Sacher v: United States,* 341 U.S. 29, (1952), dissenting opinion).

The justification for the use of summary procedure relative to the actions involved herein shows patently that the denial of a hearing cannot be justified as a reasonable compromise.

Knowledge of wrongdoing and intent to do wrong should be revelant when one is imprisoned and his property summarily siezed. A hearing should have been conducted to permit petitioner to present evidence and justification of his actions.

The review of the facts, although favorable to petitioner at the appellate level, did not return to petitioner his time lost in jail nor his recorder. As can be noted from the Boisvert quotation, petitioner was prejudged and maliciously entrapped by a judicial conspiracy involving more than the two judges and two sheriffs, who acted unlawfully against petitioner on that date. See *Ungar v. Sarafate,*

> "an impartial judge, not caught up in the cross-currents of emotions involved enveloping the con-

tempt charge, is the only one who can protect all rights and determine whether a contempt was committed, or whether the case was either one of judicial nerves on edge or judicial tyranny."

In *Cooke v. United States,* 267 U.S. 517, (1924), Chief Justice Taft said:

"The Court in *Savin-Petitioner,* 131 U.S. 267, applied this rule to proceedings in contempt. Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel if requested, and the right to hear testimony, relevant either to the issue of complete exculpation, or in extenuation of the offense and in mitigation of the penalty to be imposed."

Justice Frankfurter's words in *Offutt v. United States,* 348, U.S. 1117 (1954), are applicable here:

"Our concern is with the fair administration of justice. The record discloses not a rare flareup, not a show of evanescent irritation. A modicum of quick temper must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with your petitioner."

The case cited of *Hagan,* indicates the insidious nature of the entrapment and seizure of the recorder by the conspirators.

The following is from Justice Roger Traynor's dissent in *Chula v. Superior Court,* 57 Cal. 2d, 199, at page 208:

> "The classification of contempt as direct and indirect is merely a semantic device for differentiating contempt that can be adjusted summarily, from those that can be adjudicated only after adequate notice and hearing. When a contempt occurs within the immediate view and presence of the court, the judge is fully informed of all the facts necessary to adjudicate the guilt or innocence of the alleged contemnor. When, however, the court is not so informed of such facts, notice and hearing are necessary to get them."

From 39 Minnesota Law Review, at page 896:

> "The inherent power of courts to punish contempt summarily arose from the court's necessity of self preservation, or of precluding obstruction to their administration of justice. Summary contempt procedure forms an exception to the requirements of normal due process and is limited in application to cases where the contomacious behavior occurs in the immediate view and presence of the court, i.e., to direct contempts. Power to punish contempt summarily is arbitrary and should not be uselessly amplified."

In 5 Duke Bar Journal, at pages 158 and 159:

"This latter observation raises a broader question as to whether there actually are any situations, in which the summary powers are necessary to accomplish the ends which purportedly justify its use."

"It is suggested that the reasoning advanced to support this power often fails to distinguish between punishment, which is sufficient to remove an obstruction to the administration of justice, or to vindicate the dignity of the court and punishment which is necessary to accomplish these purposes. Indeed, if the test of necessity is applied to the various situations, in which the power has been invoked, the apparent conclusion, is that it has no justification at all. Consider, for example, the clearest case — a calculated disturbance in the courtroom, intended by its perpetrator not only to obstruct the proceedings, but to insult the court. Instead of punishing the offender summarily, the judge could order him arrested and charged with the crime of contempt. The obstruction to the administration of justice would thereby be removed; and the vindication of the dignity of the court could be postponed to a separate hearing."

"At least one commentator has maintained, that the summary contempt power should be continued to be tolerated as a petty power to deal with petty offenses. To this it might be answered, that, if the offenses are petty, they should not justify an exception to constitutional right. The

only basis for such an exception is not expediency but necessity; and absent necessity, exception should fail."

II.

RE BOISVERT'S IMMUNITY AND THE CIVIL RIGHTS ACT

In Robichaud v. Roanan, 351 Fed., 2d, 533 (1966) it is stated on page 535:

"No immunity from liability for the prescribed conduct is mentioned in the statute, but courts have engrafted an immunity in favor of certain public officials for acts done in the performance of their traditional official functions. The immunities recognized in these cases are generally those which were respected under common law. See, for example, *Tenny v. Brandlove,* 341 U.S. 367 71 Sp. Ct. 783, 95 L.Ed. 1019. . . .The arguments generally advanced in support of immunity are (1) the danger of influencing public officials by threat of a law suit, (2) the deterent effect of potential liability on men who are considering entering public life. (3) The drain on the valuable time of the official caused by insubstantial suits. (4) The unfairness of subjecting officials to liability for the acts of their subordinates. (5) The theory that the official owes a duty to the public and not to the individual. (6) The feeling that the ballot and the formal removal proceedings, are far more appropriate ways to enforce the honesty and efficiency of public officers.

". . . We believe, however, that when a prosecuting attorney acts in some capacity other than his quasi judicial capacity, then the reason for this immunity — in integral relationship between his acts and the judicial process — ceases to exist. If he acts in the role of a policeman, then why should he not be liable, as is the policeman, if, in so acting, he has deprived the plaintiff of his rights, privileges, or immunities secured by the Federal Constitution and laws. See *Monroe v. Pappe,* 365 U.S. 167. . . .To us, it seems neither appropriate nor justifiable, that for the same act, immunities should protect the one, and not the other. . . .The trial court must determine the nature of the acts alleged to have been wrongfully committed, for the appellees may have abandoned their 'quasi-judicial role. If, they, so doing, committed acts, or authoritativly directed the commission of acts, which ordinarily are related to a police activity, as opposed to judicial activity, then the cloak of immunity should not protect them."

Your petitioner submits that Mr. Boisvert was not sitting as a Judge Pro Tempore, and therefore as a Court Commissioner, he did not have jurisdiction to hold your petitioner in contempt and was without any judicial immunity he might have otherwise held as a Judge where Civil Rights questions were absent.

In *Jonson v. Agnne,* 355 Fed. 2d, 129 (1966) it is stated on page 133:

"It should be equally clear that both the language and the purpose of the Civil Rights Acts, are inconsistent with the application of the common law notions of official immunity in all suits brought under these provisions. See *Norton v. McShain,* 332 Fed. 2d, 855, 861. In suits brought under Section 1983, 42 U.S.C. (the Civil Rights Act), an indispensable element of a plaintiff's case, is a showing that the defendant (or defendants), acted, 'under color of any statute, ordinance regulation, custom or usage of any state.' (42 U.S.C. 1983).

. . . Furthermore, and perhaps more basically the purpose of Section 1983 as well as the other Civil Rights provisions, is to provide a Federal remedy for the deprivation of the Federally guaranteed rights, in order to enforce more perfectly Federal limitations on unconstitutional state actions. To hold all state officers immune from suit, would largely frustrate the salutary purpose of this provision. We conclude the defense of official immunity should be applied sparingly in suits brought under Section 1983."

III.

RE CALIFORNIA CLAIM STATUTES AND EQUAL PROTECTION OF THE LAW

The position of Mr. Boisvert throughout the conversion action was that it was barred by the prohibition of the cited Sections of the California Government Code on the grounds that appellant, (petitioner here), had not filed timely with the County Board of Supervisors a claim for the return of said recorder. This also was the apparent basis for the issuance of a writ of prohibition enjoining the prosecution of petitioner's action in the California courts.

The claim does not come within the provisions of the cited sections of the California Government Codes. If the damages caused by defendant Boisvert had been done while he was sitting as a Judge Pro Tempore, even then the immunity would not apply, and application of the cited sections of the California Government Code would not be pertinent because of lack of due process and acts in excess of jurisdiction.

Mr. Boisvert was a commissioner for the Superior Court of the State of California for the County of Los Angeles. He is qualified by appointment to such office to sit as a Judge Pro Tempore after stipulation by all parties.

The reporter's transcript and the pleadings herein show that:

1. No stipulation was executed as to Mr. Boisvert to hear that particular hearing.

2. An objection to Mr. Boisvert was stated to Judge Levitt, when the hearing was being assigned to Mr. Boisvert.

Under these circumstances, Mr. Boisvert was not sitting as a judge pro tempore, and none of his acts could have been done within the scope of his employment as a commissioner. He usurped the powers and authority of a judge and under these circumstances, the county or State may or may not have a liability to indemnify him, for any judgment secured against him.

CONCLUSION

In order to effectuate the protection of Constitutional rights, provided by the Bill of Rights, and by the 14th amendment to the Constitution of the United States and to implement the intent of the Congress of the United States as displayed in the popularly termed Civil Rights Acts, and to provide equal protection of the laws, to citizens who have actions against governmental entities from different procedural requirements for the same claims against private citizens arbitrarily imposed to minimize liability even in intentional torts, such as authorized actions to convert property in connection with erroneous contempt holdings the writ of certiorari should issue to preserve the basic rights given to citizens against arbitrary actions taken against them under color of State authority.

Respectfully submitted,

EVERT L. HAGAN,
In Pro Se.

DATED: September ....., 1966

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APPENDIX A

Constitutional Provisions and Statutes Involved:

Bill of Rights
Fourth - Fifth - Eighth - and Fourteenth Amendment to the United States Constitution
28 U.S.C. Section 1343
42 U.S.C. Section 1983

California Government Code:

Section 911.2: TIMES FOR PRESENTMENT OF CLAIMS—"A Claim relating to a cause of action for death or injury to a person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after accrual of the cause of action."

Section 915 DELIVERY OR MAILING OF CLAIM, AMENDMENT, OR APPLICATION. —(a) "A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

(1) Delivering it to the clerk, secretary or auditor; or

(2) Mailing it to such clerk, secretary or auditor or to the governing body at its principal office.

Section 945.4 PROHIBITION AGAINST SUIT IN ABSENCE OF PRESENTATION OF CLAIM AND ACTION THEREON. "No suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division."

Section 950.2 WHEN ACTION BARRED FOR FAILURE TO PRESENT CLAIM OR COMMENCE ACTION WITHIN TIME SPECIFIED.—"Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the maintenance of an action against a public employee or former public employee for injury resulting from an act or ommission in the scope of his employment as a public employee."

CALIFORNIA RULES OF COURT.

Rule 211 (b)

"No pretrial conference shall be reported by a phonographic reporter of the court except upon:

(i) demand of a party to the case who shall advance the fee, if and, at the time of the demand; provided that, the superior court of any county may by local rule require that the demand shall be made, and the fee advanced, to the clerk at least 48 hours before the date of the pretrial conference; or (ii) order of the pretrial conference judge, in which event the fee, if any, shall be evenly divided between the parties.

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APPENDIX B-1

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HAROLD V. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, Petitioners,	
vs.	No. 847712
MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, Respondent, EVERT L. HAGAN, Real Party in Interest.	

[Original filed Oct. 27, 1964, County Clerk.]

ALTERNATIVE WRIT OF PROHIBITION AND MANDATE

Oct. 27, 1964

THE PEOPLE OF THE STATE OF CALIFORNIA TO THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, Respondent and to EVERT L. HAGAN, Real Party in Interest:

GREETINGS:

WHEREAS by the verified petition of HAROLD E. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, it has been made to appear that you, the Respondent Court, are proceeding in excess of your jurisdiction by continuing to entertain an action entitled Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., No. 71483, which is barred by law for failure to file a claim with the public entity as required by law, and it appearing that the petitioners herein have no other plain, speedy and adequate remedy at law.

WE, THEREFORE, command you the said MUNICIPAL COURT, and you the said EVERT L. HAGAN, forthwith on the receipt of this writ to refrain from taking any further proceedings in the case of Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., No. 71483, until further order of this court; or in the alternative, that you the said MUNICIPAL COURT grant the motion for summary judgment of petitioners herein in said Municipal Court case; or in the alternative that you and each of you show cause before this court in Department 70 thereof of the Superior Court of the State of California for the County of Los Angeles, on the 6th floor of the County Courthouse, 111 North Hill Street, Los Angeles, on the 24th day of November, 1964, at the hour of 9:30 A.M., why an order should not be made perman-

ently restraining and enjoining you from taking any further proceedings in connection with said action, other than to grant the aforesaid mention for summary judgment or to dismiss said action.

We further command you that pending further order of this court, you desist and refrain from any further proceedings on said complaint.

Witness the Honorable A. CURTIS SMITH, Judge of the Superior Court of the State of California for the County of Los Angeles.

Attest my hand and seal of this court this 27th day of October, 1964.

WILLIAM G. SHARP, Clerk of the Superior Court of the State of California for the County of Los Angeles

By J. MAC GREGOR

Deputy

Let the foregoing writ issue.
DATED THIS 27th day of OCTOBER, 1964.

A. CURTIS SMITH

Judge of the Superior Court

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APPENDIX B-2

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HAROLD V. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, Petitioners, vs. MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, Respondent, EVERT L. HAGAN, Real Party in Interest.	No. 847712

PEREMPTORY WRIT OF PROHIBITION AND MANDATE

THE PEOPLE OF THE STATE OF CALIFORNIA TO THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIA LDISTRICT, Respondent and to EVERT L. HAGAN, Real Party in Interest:

GREETINGS:

WHEREAS by the verified petition of HAROLD V. BOISVERT COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, it has been made to appear that you, the Respondent Court, are proceeding in excess of your jurisdiction by continuing to entertain an action entitled Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., No. 71483, which is barred by law for failure to file a claim with the public entity as required by law, and it appearing that the petitioners herein have no other plain, speedy and adequate remedy at law.

WHEREAS an Alternative Writ of Prohibition and Mandate issued out of this Court commanding you the said Municipal Court, and you the said Evert L. Hagan. to show cause on November 24, 1964, why an order should not be made permanently restraining and enjoining you from taking any further proceedings in the aforesaid Municipal Court case other than to dismiss said action:

WHEREAS this Court has rendered its decision and judgment ordering the issuance of a peremptory writ as aforesaid;

WE, THEREFORE, command you the said Municipal Court to cease and desist any further proceedings in Case No. 71483, Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, et al., other than to dismiss the said case; and

We further command you, the said Municipal Court to dismiss the aforesaid Case No. 71483, Evert L. Hagan v. Harold V. Boisvert, County of Los Angeles, Joe T. Sweat, R. L. Brown, et al., as to all said defendants with prejudice forthwith upon the receipt of this writ, and that you make known to this Court by ..... how you have complied therewith.

Witness the Honorable A. Curtis Smith, Judge of the Superior Court of the State of California for the County of Los Angeles.

Attest my hand and seal this ..... day of ....., 1964.

WILLIAM G. SHARP, Clerk of the Superior Court of the State of California for the County of Los Angeles

By .....
Deputy

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APPENDIX B-3

MUNICIPAL COURT DISMISSING CASE

Municipal Court Los Angeles, Cal., Dec. 4, 1964

Hagan vs. Boisvert No. 71483

In the above entitled case

case dismissed pursuant to writ

GEORGE J. BARBOUR, Clerk

This notice is informal and for
information of Counsel Only.

By B. J. BRYNE, Deputy

76P475G C1 189 Cdb 2-60 Division 1

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APPENDIX B-4

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

HAROLD V. BOISVERT, COUNTY OF LOS ANGELES, JOE T. SWEAT and R. L. BROWN, Petitioners and Respondents,	)	2nd Civil 29466
vs.	)	
EVERT L. HAGAN, Real Party in Interest and Appellant.	)	

[Filed May 24, 1966 — Dist. Court of Appeal — Second Dist., J. T. Alley, Clerk].

DISTRICT COURT OF APPEAL OPINION AFFIRMING WRIT
May 24, 1966

APPEAL from a judgment of the Superior Court of Los Angeles County. A Curtis Smith, Judge. Judgment affirmed.

Jesse A. Hamilton, for Appellant.

Harold W. Kennedy, County Counsel, Donald K. Byrne, Deputy County Counsel, for Respondents.

On November 22, 1963, Jesse A. Hamilton, an attorney, was found to be in contempt of court and sentenced to serve five days in the county jail as punishment. The record with respect to the matter is set forth in the opinion of this court in the case of *In re Evert L. Hagan,* Criminal No. 9536, filed on the same day as this opinion.

The portion of the order of the court with respect to Jesse A. Hamilton is set forth in the minutes of the court as follows: "The court inquires of attorney Jesse A. Hamilton, attorney for defendant Evert L. Hagan, if he had knowledge that defendant Hagan had a tape recording device secreted upon his person at this hearing. Attorney Hamilton advises the court that he did not have knowledge that his client was recording this proceedings [sic]. Inquiry was made by the court as to whether the attorney Hamilton had knowledge of the source of a previuos transcript used by him in appeal proceedings, obtained by a secret recording device at a hearing held on October 21, 1963 before this court. Attorney Hamilton answered yes. The court finds Jesse A. Hamilton in contempt of court and sentences him to the County Jail for five days. Jesse Hamilton is ordered remanded to the custody of the Sheriff of Los Angeles County without bail."

In a subsequent habeas corpus proceeding, the contempt order was annulled. (*In re Hagan,* 224 Cal. App. 2d 590.) Reference may be made to that decision for a fuller statement of the factual background.

Thereafter appellant commenced the municipal court action with which we are presently concerned. He alleged a conversion of the recording device and sought to recover from respondents the alleged value thereof together with punitive damages. Respondents filed a demurrer to appellant's complaint on the ground that he had failed to allege that any claim had been filed as required by applicable law. This demurrer was sustained with leave to amend. Appellant filed an amended complaint which again failed to allege the filing of any claim but averred that only a demand had been made upon the superior court for the return of the recording device. Respondents again demurred on the same ground. This demurrer was overruled, whereupon respondents filed their answer together with a motion for summary judgment. Declarations of the county auditor and the clerk of the Board of Supervisors of Los Angeles County showed that no claim had been filed by appellant with either of said offices within the time required by law. Appellant's declaration in opposition to the motion contained no averment which even tended to contradict the declarations filed in support of the motion. Nevertheless, the motion for summary judgment was denied by the municipal court.

Respondents thereupon instituted the present proceedings seeking the issuance of an appropriate writ to compel the municipal court to desist from further proceedings other than to dismiss the conversion action. The court below granted petitioners the relief sought by rendering the judgment here under review.

We hold that the judgment is supported by the clear provision of applicable statutory law which establish a condition precedent to the accrual of any cause of action of the character which appellant sought to allege. That condition is the filing of a claim in the manner and within the time prescribed by law. (*Henry v. City of Los Angeles,* 114 Cal. App. 2d 603, 604; *Whaley v. Kirby,* 208 Cal. App. 2d 232, 239.)

The required claim must be filed within 100 days after accrual of the cause of action (Govt. Code, §911.2), and must be filed with the auditor or clerk of the governing body. (Govt. Code, §915, subd. (a).) Failure to file such a claim in the manner prescribed constitutes a bar to a suit for damages against the public entity (Govt. Code, §945.4) as well as against employees of such entity. (Govt. Code, §950.2.)

Appellant appears to argue that a letter written by his attorney under date of November 28, 1963, and addressed to the Honorable McIntyre Faries, then Presiding Judge of the Los Angeles County Superior Court, demanding return of the recording device was

the legal equivalent of the claim required by law.[1] The fallacy of this argument is self-evident.

The judgment is affirmed.

HERNDON, J.

We concur:

ROTH, P.J.
FLEMING, J.

[1]On December 18, 1963, an order was made in the superior court action directing that the recording device be returned to appellant; however, he refused to accept its return and elected to proceed with the conversion action which he commenced on December 23, 1963.

THE COURT: This opinion is not for publication pursuant to the provision of Rule 976, California Rules of Court.

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APPENDIX B-5

DENIAL OF HEARING IN CALIFORNIA STATE SUPREME COURT
July 20, 1966

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

July 20, 1966

Dear Sir: *I have this day filed Order* .....

HEARING DENIED
In re: 2 Civ. No. 29466
Boisvert v. Hagan

Respectfully

WILLIAM J. SULLIVAN
Clerk

(Post card)

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APPENDIX C

LETTER TO HONORABLE JUDGE FARIES

JESSE A. HAMILTON
Attorney At Law
115 N. Eastern Ave.,
Los Angeles, 22, Cal.
PH: ANgelus 2-5109

November 28, 1963

THE HONORABLE MCINTYRE FARIES,
JUDGE, PRESIDING,
SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF
LOS ANGELES,
111 N. Hill Street
Los Angeles, 12, California.

Dear Judge Faries:

On November 22, 1963, Harold V. Boisvert, purportedly sitting as Judge Pro Tem, in Department 2 C, of your Court, without authority and contrary to law, ordered a Deputy Sheriff to seize and detain one Minifon Tape Recorder belonging to my client, Evert L. Hagan.

We do not know whether this valuable machine is presently in the possession of the court or the Sheriff.

Demand is hereby made for the return of this machine to Evert L. Hagan, at 115 North Eastern Avenue, Los Angeles, 22, California, within twenty four (24) hours.

The conduct, considered by us as highly unwarranted, of Mr. Boisvert, in ordering the recorder seized and detained is fully outlined in the transcript of the proceedings before him on November 22, 1963. A copy of the transcript is enclosed herewith.

In so far as the contempt charge is concerned, the District Court of Appeal issued a writ of Habeaus Corpus and set the matter for hearing on December 18, 1963.

Very truly yours,

JESSE A. HAMILTON
/s/ Jesse A. Hamilton

JAH/1

Encl: Transcript.
cc: To: Peter J. Pitchess, Sheriff.
Harold V. Boisvert, Commissioner, Dept. 2 C.

APPENDIX D

LETTER FROM HONORABLE JUDGE FARIES TO MR. HAMILTON

Department of Presiding Judge
THE SUPERIOR COURT
Los Angeles, California

November 29, 1963

Jesse A. Hamilton, Esq.
115 N. Eastern Avenue,
Los Angeles, 22, California.

My dear Mr. Hamilton:

Reference: Your letter of November 28, 1963

Your letter together with a copy of a reporter's transcript for Friday, November 22, 1963 was hand delivered to me in my chambers at 8:45 a.m. on this date (11-29-63). On receipt thereof I telephoned Judge Levit and read him copy of your letter, and suggested (1) that he advise the County Counsel of receipt of this letter, and (2) if there is a Minifon tape recorder belonging to Evert L. Hagan in possession of Commissioner Boisvert or anywhere in any of our rooms the County Counsel should be advised; also, the Sheriff should be advised. Presumably, if there is a proceeding in the District Court of Appeal re habeas corpus

set for December 18, 1963, the Minifon probably will be there as evidence. In checking through the copy of the transcript as sent by you I note Mr. Hagan apparently said to the bailiff in part: "If you want this equipment you can have it." (page 4. line 18 et seq.)

My check of the record does not indicate there are any duties placed upon the Presiding Judge in these matters, nor has he any authority in matters of this sort occurring in departments other than his own. However, as a courtesy to you I am sending you this letter in response to your rather "demanding" letter of November 28.

Your truly,

/s/ McIntyre Faries,

McIntyre Faries
Presiding Judge.

MCF:lll